Supreme Court, U.S.
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No. 99-575

In The

Supreme Court of the United States

MORETON ROLLESTON, JR. LIVING TRUST, ET AL.,

Petitioners,

v.

THE ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, EXECUTOR,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of The State Of Georgia

RESPONDENT'S BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

The Petitioners are Moreton Rolleston, Jr., individually, the Moreton Rolleston, Jr. Living Trust, and Moreton Rolleston, Jr. in his capacities as Grantor, Trustee and Beneficiary of the Moreton Rolleston, Jr. Living Trust.

Respondent Estate of Rebecca Wight Cherry Sims is represented by Decedent's personal representative, John Randolph Cherry, Executor.

TABLE OF CONTENTS

Page

Parties to the Proceeding i

Table of Contents ii

Table of Authorities iii

Statement of Jurisdiction 1

Georgia Statute Involved 1

Errors and Omissions in Petitioners' Statement of the Case 2

Reasons for Denying the Writ 8

Argument 9

Conclusion 15

Appendix A – Judgment on Jury Verdict, Fulton Superior Court, D81176 ..... A-1

Appendix B – Judgment on Jury Verdict, Fulton Superior Court, D97003 ..... B-1

Appendix C – Interlocutory Injunction, July 7, 1997 ..... C-1

Appendix D – Findings of Fact, Conclusions of Law and Judgment, Superior Court of Fulton County, E37496 ..... D-1

TABLE OF AUTHORITIES

Page

CASES

Aiken v. Richardson, 207 Ga. 735, 64 S.E.2d 54 (1951) 6, 12, 15

Chambers v. Citizens and Southern National Bank, 242 Ga. 498, 249 S.E.2d 214 (1978), citing *New England Mutual Life Ins. Co. v. Childs*, 185 Ga. 198, 194 S.E. 561 (1937) 14

Dye v. Georgia, 205 Ga. App. 781, 423 S.E.2d 713 (1992) 6, 12, 15

Grupo Mexicano de Desarrollo, S.A. et al. v. Alliance Bond Fund, Inc., et al., ___ U.S. ___ (Docket No. 98-231, decided June 19, 1999) ..... *passim*

Heart of Atlanta Motel v. United States, 370 U.S. 241, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964) 13

Rolleston v. Cherry, 226 Ga. App. 750, 487 S.E.2d 354 (1997) 4, 12

Rolleston v. Cherry, 226 Ga. App. 908 (Table) (1997) 4

Rolleston v. Cherry, U.S. cert. den., 523 U.S. 1107, 118 S.Ct. 1677, 140 L.Ed.2d 815 (1998) 4

Rolleston v. Cherry, 466 S.E.2d 866 (1996) 5

Rolleston v. Cherry, 237 Ga. App. 733 (1999) 5, 10

Westmoreland v. Powell, 59 Ga. 256 (1877) 14

STATUTES

O.C.G.A. §18-2-22 ..... *passim*

O.C.G.A. §44-6-100 7

O.C.G.A. §44-6-102 7

O.C.G.A. §44-7-1 7

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISION

Constitution of the United States, Art. I, ¶ 8 5

FEDERAL STATUTES AND RULES

28 U.S.C. §1257(a) 1

FRCP, Rule 18(b) 11

STATEMENT OF JURISDICTION

A. The Order on Summary Judgment was entered by the Superior Court of Fulton County, State of Georgia, on July 7, 1995.

B. The Court of Appeals, State of Georgia, affirmed the trial court and rendered its opinion with all judges concurring, on April 12, 1999.

C. Respondent acknowledges that if the case below otherwise presented a proper case for certiorari, jurisdiction would be proper under 28 U.S.C. §1257(a) but denies that Petitioner presents a proper case for the grant of writ of certiorari.

GEORGIA STATUTE INVOLVED
O.C.G.A. 18-2-22

The following acts by debtors shall be fraudulent in law against creditors and others and as to them shall be null and void:

(1) Every assignment or transfer by a debtor, insolvent at the time, of real or personal property or choses in action of any description to any person, either in trust or for the benefit of or on behalf of creditors, where any trust or benefit is reserved to the assignor or any person for him;

(2) Every conveyance of real or personal estate, by writing or otherwise, and every bond, suit, judgment and execution or contract of any description had or made with intention to delay or defraud creditors, where such intention is known to

the taking party; a bona fide transaction on a valuable consideration, where the taking party is without notice or ground for reasonable suspicion of said intent of the debtor, shall be valid;

(3) Every voluntary deed or conveyance, not for a valuable consideration, made by a debtor who is insolvent at the time of the conveyance.

ERRORS AND OMISSIONS IN PETITIONERS' STATEMENT OF THE CASE

Petitioner has substantially misrepresented to this Court essential material facts in the history of this continuing litigation and the appeals thereof, either by direct misstatement or by omission. Rather than attempting to identify each specific misrepresentation or omission, Respondent hereinafter sets forth an accurate summation of the litigation between the parties with each relevant superior court order or appellate opinion referenced to the record or included in the Appendix to Respondent's Brief.

Petitioners' application for certiorari in the case at bar is the culmination of three lawsuits and numerous appeals occasioned by Petitioner Moreton Rolleston, Jr.'s professional negligence and active legal malpractice in rendering advice to Respondent's Decedent, Rebecca Wight Cherry Sims, concerning the ownership of certain accreted beach front land on St. Simon's Island, Georgia. The cases are as follows:

1985-1991 Civil Action D27179 (subsequently D81176), Superior Court of Fulton County, State of Georgia, Sandease, Ltd. and Coasthouse, Ltd., versus Rebecca

Wight Cherry Sims. Petitioner Moreton Rolleston, Jr. represented Defendant Sims in the underlying real estate transaction and counseled her not to attend the multi-million dollar closing. Her failure to attend coupled with Petitioner's inability to perform in her absence gave rise to the lawsuit for specific performance and damages. Petitioner managed to delay trial for years until he was replaced by other counsel shortly before Mrs. Sims was murdered. On March 1, 1991, six years after the initial acts of malpractice, the jury returned a verdict against Mrs. Sims' Estate in the amount of $3,800,000.00 as damages for abusive litigation. [See Respondent's Appendix "A", Judgment on Jury Verdict, Civil Action D81176, March 1, 1991.]

1992-1998 Civil Action D97003, Superior Court of Fulton County, The Estate of Rebecca Wight Cherry Sims (hereinafter "Estate") versus Petitioner Moreton Rolleston, Jr. The Estate sought damages for malpractice, fraud and fraudulent concealment, breach of fiduciary duty, indemnity and contribution as the result of Petitioner Moreton Rolleston, Jr.'s advice and actions in the underlying transaction and lawsuit (D27179 and D81176). The jury returned a verdict in favor of the Estate and against Moreton Rolleston, Jr. in the amount of $5,200,000.00 on March 22, 1995 and judgment was entered on April 7, 1995. [See Respondent's Appendix "B", Judgment on Jury Verdict D97003.] Between the rendering of the verdict and the entry of judgment, Petitioner recorded deeds transferring millions of dollars of unencumbered real estate from himself to an entity created by him one week before trial, the Moreton Rolleston, Jr. Living Trust (hereinafter "Trust"), of which he is Grantor, Trustee and Beneficiary.

Subsequently, deeds were recorded transferring the remainder of his known real estate holdings to the Trust.

1995-1999 Civil Action E37496, Superior Court of Fulton County, The Estate (Respondent herein) versus Moreton Rolleston, Jr. et al. (Petitioners herein) The case at bar was filed by the Estate against Petitioners herein on April 12, 1995 immediately upon learning of the above-referenced transfers of property in avoidance of judgment. This lawsuit petitioned the court to set aside all transfers to the Trust recorded post-judgment as fraudulent conveyances in violation of O.C.G.A. §18-2-22. The lawsuit also seeks damages arising from the tort of fraud, as well as a permanent injunction to prevent further transfers.

1995-1998 Appeals challenging the judgment in Civil Action D97003. Petitioner appealed the verdict in Civil Action D97003 to the Georgia Court of Appeals which affirmed the lower Court on March 6, 1997. *[Rolleston v. Cherry,* 226 Ga. App. 750, 487 S.E.2d 354 (1997)]. Petitioner Rolleston applied for Writ of Certiorari to the Supreme Court of Georgia, which was denied, *[Rolleston v. Cherry,* 226 Ga. App. 908 (Table) (1997)] and subsequently to the Supreme Court of the United States. The last attempted appeal was denied by this Honorable Court on May 4, 1998, conclusively establishing the award of $5.2 Million Dollars in damages in Civil Action D97003. [U.S. cert. den., 523 U.S. 1107, 118 S.Ct. 1677, 140 L.Ed. 2d 815 (1998)]

1995-1999 Appeals challenging the Injunction and summary judgment on liability in Civil Action E37496. The trial court entered a preliminary injunction on July 7,

1995 which prevented Petitioners from transferring property from the Trust to bona fide purchasers without prior approval from the Court. [See Respondent's Appendix "C", Interlocutory Injunction, July 7, 1997.] Petitioners appealed this injunction directly to the Supreme Court of Georgia which affirmed the injunction on January 22, 1996. [*Rolleston v. Cherry*, 466 S.E.2d 866 (1996)]

Following the denial of Petitioner's Petition for Writ of Certiorari to this Court in underlying Civil Action D97003, the Superior Court of Fulton County granted summary judgment to Respondent on July 7, 1998 on the issue of Petitioners' liability for fraudulent conveyances in avoidance of judgment. [See Respondent's Appendix "D", Findings of Fact, Conclusion of Law and Judgment, Superior Court of Fulton County, E37496.] The Georgia Court of Appeals affirmed the trial court on April 12, 1999, four years to the day from the filing of the suit. [See *Rolleston v. Cherry*, 237 Ga. App. 733 (1999)]. The Supreme Court of Georgia denied Petitioner's Request for Writ of Certiorari on September 17, 1999.

Petitioners' application for certiorari is predicated on two questions: whether this Court's recent decision in *Grupo Mexicano de Desarrollo, SA, et al. v. Alliance Bond Fund, Inc., et al.*, ___ U.S. ___ (Docket No. 98-231, decided June 17, 1999) renders the trial court's preliminary injunction fatally defective and whether such injunction poses an impermissible burden on interstate commerce in violation of the Commerce Clause of the United States Constitution, Const. U. S., Art I. §8. Both questions must be answered in the negative as is more fully shown hereafter.

The injunction entered by the Superior Court of Fulton County in Civil Action E37496 was in the nature of a post-judgment injunction because Petitioner had already been adjudicated liable for $5.2 Million Dollars in damages in the underlying lawsuit which his transfers were intended to avoid. Moreover, the injunction was entered in a case relying expressly on Petitioners' violation of O.C.G.A. §18-2-22, Georgia's fraudulent conveyance statute, and was not a suit in equity as distinguished from *Grupo Mexicano, supra.*

Although Petitioner claims that a federal question is also presented, he raised no constitutional issue in the trial court, and it is well-settled that a court of review will not address questions not presented in the first instance of appeal, *Dye v. Georgia,* 205 Ga. App. 781, 423 S.E.2d 713 (1992); *Aiken v. Richardson,* 207 Ga. 735, 64 S.E.2d 54 (1951). In their enumerations of error to the Court of Appeals of the State of Georgia, Petitioners contended that the trial court misapplied the statute, O.C.G.A. §18-2-22, and failed to consider certain evidence in ruling that Petitioner's conveyances were fraudulent in law. Petitioners did not raise a question of interstate commerce in their appeal to the Georgia Court of Appeals, nor was such issue addressed by that court. The Georgia Court of Appeals merely affirmed the lower court's grant of summary judgment in the Estate's favor.

In its consideration of Petitioners' arguments, this Court should be aware of Petitioner Rolleston's blatant misrepresentations of fact to this Court. Contrary to Petitioners' allegation that the Estate once offered to settle for $300,000.00, the only party to ever offer $300,000.00 was Petitioner Moreton Rolleston, Jr.'s own insurance carrier.

The Estate did make an unliquidated demand for policy limits which was rejected.

Petitioners also failed to advise this Court of their blatant violation of the interlocutory injunction, resulting in a contempt citation and a fine affirmed by the Georgia Court of Appeals. Despite the existence of the interlocutory injunction which prohibited Petitioners from transferring or conveying any property without prior court approval, within the month following the trial court's grant of final summary judgment on July 7, 1998 on the issue of liability, the Trust transferred *all* real and personal property by 100 year lease to a new entity, to wit: the Moreton Rolleston, Jr., Limited Partnership, wholly owned and controlled by Petitioner Moreton Rolleston, Jr.

Although Petitioners argued to the Court of Appeals in their Motion to Reconsider that a lease does not transfer an interest in land, Petitioner Rolleston had admitted in court on October 5, 1998 that he had obtained a purchaser for the property and Chicago Title Company had already agreed to issue good marketable title on the basis of property rights conferred by a long-term lease. It is well-settled in Georgia law that a long-term lease conveys an interest in land. O.C.G.A. §§ 44-6-100; 44-6-102; 44-7-1. Had that fraud not been discovered in time to halt the subsequent transfer, the Moreton Rolleston, Jr., Limited Partnership, of which Petitioner Rolleston is the general partner and Petitioner Rolleston Living Trust is the sole limited partner, would have been in position to convey good marketable title to a bona fide purchaser without notice and thereby defeat Respondent's judgment.

Respondent also excepts to Petitioners' misstating the date of the term of its petition as October 2000, when the petition was docketed in the October, 1999 term and is ripe for consideration in this Court's October 1999 Term.

Petitioner Moreton Rolleston, Jr.'s actions in the underlying case and appeals thereof, as set forth above and as documented in Respondent's Appendices and the present Petition to this Court are evidence of Petitioners' disregard for the facts and the law. This case does not present any question entitling Petitioners to review in this Court.

REASONS FOR DENYING THE WRIT

There are no compelling reasons for review of the lower state court's decision on writ of certiorari, and multiple reasons for denying the writ:

- Petitioner cites no conflict with any decision of the United States court of appeals or a state court of last resort or any departure from the accepted and usual course of judicial proceeding so as to call for an exercise of this Court's supervisory power;
- Petitioner cites no decision of a federal question by a state court of last resort that conflicts with another state court of last resort or of a United States court of appeals;
- Petitioner cites no important question of federal law that has not been but should be settled by this Court, or that has been decided in a way that conflicts with relevant decisions of this Court.

ARGUMENT

A. The Superior Court of Fulton County Had Express Statutory Authority to Restrain and Enjoin Petitioners From Transferring Property.

Petitioner's First Question fails to set forth any grounds for an appeal to this Court because the recently decided case, upon which Petitioners rely, has no application to the case at bar. In *Grupo Mexicano, supra,* this Court held that there was no precedent in a suit in equity to issue an injunction preventing a pre-judgment transfer of property before the entitlement to money damages is judicially established. The case at bar is founded on express statutory authority, to wit: O.C.G.A. §18-2-22, the Georgia fraudulent conveyance statute, which is in derogation of the common law and excludes this instant case from the rule of equity.

The *Grupo Mexicano, supra,* case is distinguishable on multiple levels from the case at bar. Specifically, Respondent was forced to file suit for the express purpose of setting aside transfers in order to satisfy the money judgment previously awarded. Petitioner Moreton Rolleston, Jr., an admitted multi-millionaire, transferred all of his real and personal property to a living trust wholly owned and controlled by him *after* money damages in the amount of $5.2 Million Dollars were awarded to Respondent by the jury, but *before* the judgment was signed and entered. Although the Trust's title to said property is a legal fiction, said transfers nonetheless prevented Respondent from executing on its judgment for more than four years.

Not only do Petitioners' unclean hands prevent them from seeking relief in a court of equity, it is also clear in *Grupo Mexicano, supra,* that said case has *no* application where express statutory authority exists to enjoin the acts contemplated by Petitioner.

Pursuant to O.C.G.A. § 18-2-22, *"The following conveyances shall be fraudulent in law* against *creditors and others. . . . "* in three enumerated instances. The trial court, in granting summary judgment, specifically found that it was not necessary for Respondent to prove all elements of the statute, and that it sufficed to prove any one of the three elements to entitle Respondent to have the conveyances declared null and void and set aside. The Court of Appeals of the State of Georgia confirmed that Respondent's burden of proof was satisfied by proving any one of the statutory elements. [*Rolleston v. Cherry,* 237 Ga. App. 733 (1999)]

Petitioners, in formulating their argument, addressed only the third element of the fraudulent conveyance statute, to wit:

> *Every voluntary deed or conveyance, not for a valuable consideration, made by a debtor who is insolvent at the time of the conveyance. O.C.G.A §18-2-22(3)*

Moreover, their argument failed to address the fact that the transfers by Petitioner Moreton Rolleston, Jr., were *voluntary* and entirely devoid of *consideration.* Therefore, even if Petitioner Moreton Rolleston, Jr. had been solvent at the time of the conveyances, the lack of consideration and the voluntariness of the transfers rendered them fraudulent in law.

Judge Blackburn, writing for the Court of Appeals, specifically noted that Petitioners' contention that Petitioner Rolleston was insolvent at the time of the transfers not only lacked merit, but was superfluous since Respondent had already fully satisfied the second statutory prohibition, to wit:

> *Every conveyance of real or personal estate, by writing or otherwise, and every bond, suit, judgment and execution or contract of any description had or made with intention to delay or defraud creditors, where such intention is known to the taking party; a bona fide transaction on a valuable consideration, where the taking party is without notice or ground for reasonable suspicion of said intent of the debtor, shall be valid; O.C.G.A. 18-2-22(2)*

As previously stated, the existence of the Georgia prohibition against fraudulent transfers, codified as O.C.G.A. §18-2-22, distinguishes Petitioners' claim from *Grupo Mexicano, supra,* since that case is narrowly confined to instances of pre-judgment injunction in a case founded in equity. In fact, in footnote 7, Justice Scalia, writing for this Court, specifically distinguishes the *Grupo Mexicano* case from cases arising under state fraudulent conveyance laws:

> *Insofar as Rule 18(b) [rule inapplicable to action on fraudulent conveyances] applies to such an action, the state statute eliminating the need for a judgment may have altered the common law rule that a general contract creditor has no interest in his debtor's property. Because this case does not involve a claim of fraudulent conveyance, we express no opinion on the point.* Grupo Mexicano, supra, *at 15, Footnote 7.*

In the case at bar, Respondent already held a money judgment in the amount of $5.2 Million Dollars, plus interest, against Petitioner Moreton Rolleston, Jr., when the Superior Court of Fulton County issued a preliminary injunction on July 7, 1995 in the case at bar. [Appendix "B" Judgment, D97003 and *Rolleston v. Cherry*, 226 Ga. App. 750, 487 S.E.2d 354 (1997)] Petitioners' first question is entirely without merit and presents no grounds entitling Petitioners to a Writ of Certiorari from this Court to the Court of Appeals of Georgia.

B. No Federal Question Was Timely Raised and The Opinion of The Georgia Court of Appeals Does Not Burden Interstate Commerce.

Petitioners' Second Question presents no issue for consideration by this Court because Petitioner admits that a federal question was not raised in either the trial court or the Georgia Court of Appeals until Petitioners moved for reconsideration of the Court of Appeals' opinion. (Petitioners' Brief, pp. 4, 5.)

Petitioners presently contend that the ruling of the Georgia Court of Appeals constitutes an impermissible restraint of trade and places a destructive burden on interstate commerce. Petitioners raised no such claim in the trial court, nor did they enumerate such error in their appeal of the trial court's order granting summary judgment. It is well-settled that the federal question must be raised in the first instance prior to the appearance of the case in a court of review, *Aiken v. Richardson, supra, and Dye v. Georgia, supra.* However, even had the questions been properly and timely raised, Petitioners' contention

presents no legal basis because it misstates the holding of the opinion of the Georgia Court of Appeals. In the case at bar, a judgment in excess of Five Million Dollars had already been rendered against Petitioner Moreton Rolleston, Jr. prior to his recorded transfers of real property. There was nothing uncertain about Respondent's claim, nor was there any secret that Petitioner intended to utilize the legal fiction of the Moreton Rolleston, Jr., Living Trust as a conduit to transfer real property to bona fide purchasers without notice and therefore to avoid Respondent's judgment entirely.[1]

Petitioner Moreton Rolleston, Jr. first appeared in this Court in *Heart of Atlanta Motel v. United States*, 370 U.S. 241, 85 S.Ct 348, 13 L.Ed. 2d 258 (1964). He did not hesitate in that instance to prefer his personal interests, as an owner of the Heart of Atlanta Motel, to imposing the burden of racial discrimination on interstate commerce.

Petitioners contend that the Georgia Court of Appeals has construed O.C.G.A. §18-2-22 to prevent the conveyance of good marketable title to real property by a debtor during the pendency of a lawsuit. However, this reading of the opinion completely ignores the purpose of the statute which prohibits only those conveyances wherein:

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[1] A portion of the opinion of the Georgia Court of Appeals deals with the order of the trial court which found Moreton Rolleston, Jr., in contempt for a further attempt to avoid the judgment by transferring all of his property by 100 year lease to another wholly owned and controlled entity, the Moreton Rolleston, Jr. Limited Partnership. Petitioners did not reference this portion of the opinion in their petition.

1) The debtor, rendered insolvent by the assignment or transfer, retains any trust or benefit for himself;

2) the debtor intends the transaction to delay or defraud creditors, and the transferee has knowledge of the intent to defraud; or

3) the debtor receives no consideration for his voluntary deed or conveyance.

The Georgia Court of Appeals quite rightly pointed out that it is only necessary for the Plaintiff to satisfy one prong of the statute in order to prevail. In the case below, not only does O.C.G.A. §18-2-22 apply to the Estate as the "others" holding an unascertained amount of damage and protected by a long line of case authority[2] but also Petitioners violated all three prongs of the statute. As Trustee and as the sole income beneficiary of the Moreton Rolleston, Jr., Living Trust, Petitioner Rolleston retained all the benefit of the Trust [O.C.G.A, §18-2-22(1)]; his knowledge is imputed to the Trust as taking party because the Trust is Rolleston's alter ego [O.C.G.A. §18-2-22(2)]; and finally, Petitioners admitted in judicio that the transfers were voluntary and no consideration was paid or received [O.C.G.A. §18-2-22(3)].

It is clear that the Georgia Court of Appeals' construction of the statutory language targets only those tortfeasors whose conveyances are intended to defraud

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[2] *Westmoreland v. Powell*, 59 Ga. 256, 258 (1877) and *Chambers v. Citizen & Southern National Bank*, 242 Ga. 498, 249 S.E.2d 214 (1978) citing *New England Mutual Life Ins. Co. v. Childs*, 185 Ga. 198, 202, 203, 194 S.E. 561 (1937).

creditors and others and that it in no way restrains transfers to bona fide purchasers in arms-length transactions made in the ordinary course of business. What is perhaps not so clear, but which is implicit in Petitioners' argument, is their effort to set up constitutional issues to allow them to delay the ultimate day of justice for the duration of yet another appeal to the Supreme Court of the United States, in the same manner as was done in the underlying judgment.

It is well-settled that a constitutional issue cannot be raised for the first time on appeal, *Dye v. Georgia, supra; Aiken v. Richardson, supra.* However, it is not necessary for this Court to reach this issue because Petitioners' argument is absurd on its face. The statutory language carves out an exception for bona fide purchasers without notice. None of the examples cited by Petitioners for their contentions that the opinion of the Court of Appeals would wreak havoc in the marketplace or create chaos in the real estate field is even remotely related to the situation in the case at bar where Petitioner Rolleston's conveyances were conveyances in name only. It is as if Rolleston transferred his billfold from his vest pocket to his pants pocket. The man who is wearing the suit is the same and he has equal possession, use and benefit of all the property therein.

CONCLUSION

Petitioners' reliance on the case of *Grupo Mexicano, supra,* is misplaced because Respondent already possessed a multi-million dollar judgment against Petitioner

Moreton Rolleston, Jr., when the trial court enjoined Petitioners from subsequent transfers. Moreover, *Grupo Mexicano, supra,* has no application to cases predicated on statutes in derogation of common law, and specifically those state statutes prohibiting fraudulent conveyances, such as O.C.G.A. §18-2-22, which Petitioners violated in its entirety.

Petitioners' second argument that the opinion of the Court of Appeals of Georgia violates the Commerce Clause of the United States Constitution is fatally flawed because no federal question was raised by Petitioners in either the trial court or the first appearance on review to the Georgia Court of Appeals. However, pretermitting the failure to timely and properly raise a federal question, Petitioners' argument is patently absurd because Respondent's claim was not uncertain, but was reduced to judgment prior to the filing of the case at bar.

The decision of the Court of Appeals of Georgia is in accordance with the law of Georgia and the Constitutions of the State of Georgia and the United States. Petitioner has failed to show that the opinion of the Court of Appeals of the State of Georgia in any way violates the Commerce Clause of the United States Constitution or deprives Petitioners of any constitutional rights. The opinion of this Court in *Grupo Mexicano, supra,* upon which Petitioners rely, is inapplicable because Respondent's case is founded on express statutory authority prohibiting fraudulent conveyances. Respondent Estate of Rebecca Wight Cherry Sims submits that for the

reasons stated above the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Counsel for Respondent

Dated: November 3, 1999

APPENDIX

TABLE OF CONTENTS

		Page
Appendix A	– Judgment on Jury Verdict, Fulton Superior Court, D81176	A-1
Appendix B	– Judgment on Jury Verdict, Fulton Superior Court, D97003	B-1
Appendix C	– Interlocutory Injunction, July 7, 1997	C-1
Appendix D	– Findings of Fact, Conclusions of Law and Judgment, Superior Court of Fulton County, E37496	D-1

APPENDIX A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COAST HOUSE, LTD. and SANDEASE, LTD., Plaintiffs, vs. JOHN RANDOLPH CHERRY, Executor of the Estate of Mrs. Rebecca W. Cherry Sims, Defendant.	CIVIL ACTION FILE NO. ~~D-27179~~ Transferred to Civil Action File No. D-81176

JUDGMENT ON JURY VERDICT

(Filed March 1, 1991)

This action came on for trial before the Court and a jury, Honorable Frank Eldridge, presiding, and the issues having been duly tried, and the jury having duly rendered its verdict; and

Plaintiffs having claimed that the sum of their verdicts designated A ($900,000.00) and B ($1,625,000.00), totalling $2,525,000.00, are concurrent with their judgment designated E ($3,000,000.00), which sum is the greater of the two concurrent amounts; and Plaintiffs having taken the position that they are entitled to full satisfaction of either to the greater amount of $3,000,000.00; and this Court having required Plaintiffs to make an election between the sum of A and B on the one hand, and E on the other, and having permitted a stand-by election; and

Plaintiffs having elected E ($3,000,000.00) over A ($900,000.00) and B ($1,625,000.00) (with an alternative or

stand-by election of A and B, only in the event that upon appeal or post-verdict ruling or order that E is set aside or reduced below the sum of A and B), which election both "primary" and "stand-by") having been authorized by this Court; and damage item D ($800,000.00) being independent and requiring no election, and Plaintiff having waived item F ($5,000.00);

IT IS ORDERED AND ADJUDGED

That the Plaintiffs Coast House, Ltd, and Sandease, Ltd. recover of the Defendant, John Randolph Cherry, Executor under the Last Will and Testament of Rebecca Wight Cherry Sims, the sum of $3,800,000.00 with interest thereon at the rate of 12% as provided by law, and its costs of this action.

In the event that item E is set aside or reduced below the sum of items A and B as above described, then, and only in that event, Plaintiff will recover of Defendant the sum of $3,335,000.00, with interest thereon at the rate of 12% as provided by law, and its costs of action.

Dated at Atlanta, Fulton County, Georgia, this the 1 day of March, 1991.

/s/ Frank M. Eldridge
Judge, Superior Court of
Fulton County, Georgia

Presented by:

/s/ Austin E. Catts
AUSTIN E. CATTS
Georgia Bar No. 0116900

ATTORNEY FOR PLAINTIFFS

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COAST HOUSE, LTD. and SANDEASE, LTD., Individually and as Joint Ventura Partners, Plaintiffs, vs. JOHN RANDOLPH CHERRY, Executor of the Estate of Mrs. Rebecca Wight Cherry, Sims, Deceased, Defendant.	)	CIVIL ACTION FILE NO. D-81176

SPECIAL VERDICT FORM

(Filed Feb. 27, 1991)

I

We, THE JURY, find that the Plaintiffs were damaged by the Defendant's breach of contracts.

YES ✓ NO _____

If "YES". amswer [sic] each of the subparts and II below "NO".

If "NO", answer II below "YES".

A. We find that the Plaintiffs suffered damages as a direct and immediate consequence of Defendant's breach of contract for lost use of capital in the form of lost interest, expenses spent for development which did not take place, and administrative costs

caused by the delay in the amount of $900,000.

B. We find that the Plaintiffs suffered damages as a direct and immediate consequence of the Defendant's breach of contract in the form of increased development costs in the amount of $1,625,000.

~~C. We find that the Plaintiffs lost profits as a direct and immediate result of the Defendant's breach of contract in the amount of~~

$____-____$.

/s/ FME

D. We find that the Plaintiffs incurred attorneys fees and litigation expenses as a result of the bad faith conduct of the Defendant in the amount of $800,000.

E. We find that the Plaintiffs incurred damages, not including attorneys fees or expenses of litigation, by the abusive litigation tactics of the Defendant in the amount of $3,000,000.

F. We find nominal damages in the amount of $5,000.

II

We, THE JURY, find that Plaintiffs suffered no recoverable damages.

YES _____ NO ✓

This 27th day of February, 1991.

/s/ Charles E. Crowder
Foreperson

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the within and foregoing JUDGMENT ON JURY VERDICT upon defendant's attorneys, Myles E. Eastwood, Esq. and Taylor W. Jones, Esq. via telecopier to (404) 872-2095 and via first-class mail with the proper postage affixed thereto addressed as follows:

Taylor W. Jones, Esq.
JONES, BROWN & BRENNAN
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Myles E. Eastwood, Esq.
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1900 One Georgia Center
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Atlanta, Georgia 30308

This 1st day of March, 1991.

/s/ Austin E. Catts
Austin E. Catts

6
15th April 98

Patricia Brown

APPENDIX B

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, Executor, Plaintiff,	]	CIVIL ACTION FILE NO. D97003
v.	]	
MORETON ROLLESTON, JR., Defendant.	]	

JUDGMENT ON JURY VERDICT

(Filed Apr. 7, 1995)

This action having come on for trial before the Court and a jury, the Honorable Isaac Jenrette, presiding, and the issues having been duly tried, and the jury having duly rendered its verdict (attached hereto as Exhibit "A"),

IT IS HEREBY ORDERED AND ADJUDGED

That the Plaintiff, The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor, shall recover of the Defendant, Moreton Rolleston, Jr., the principal sum of FIVE MILLION ONE HUNDRED THOUSAND ($5,100,000.00) DOLLARS, plus expenses of litigation in the amount of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS, together with the costs of this action and Judgment is hereby entered for said amount;

That the Plaintiff, The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor, shall recover of the Defendant, Moreton Rolleston, Jr., post-judgment interest thereon at the rate of twelve percent (12%) per annum as provided by law, on the principal sum of FIVE MILLION ONE HUNDRED THOUSAND ($5,100,000.00) DOLLARS to the date of satisfaction of said principal sum and Judgment is hereby entered for said amount; and

Plaintiff filed its affidavit showing demand was made via certified mail on January 13, 1993 for unliquidated damages in the amount of One Million ($1,000,000.00) Dollars and Defendant having failed to satisfy said demand within the time required by O.C.G.A. §51-12-14, the Plaintiff, The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor, shall further recover of the Defendant, Moreton Rolleston, Jr., pre-judgment interest in the amount of Two-Hundred Fifty-Two Thousand Four Hundred Ninety-Three and 15/100 ($252,493.15) Dollars, pursuant to O.C.G.A. §51-12-14, said amount being interest at the rate of twelve percent (12%) per annum running from thirty days after Plaintiff's unliquidated damages demand on January 13, 1993, to the date of Judgment on March 22, 1995. Judgment is hereby entered for said amount.

This 6th day of APR, 1995,

/s/ Isaac Jenrette
The Honorable Isaac Jenrette,
Chief Judge
Fulton County Superior Court

Presented by:

/s/ Shelby A. Outlaw
SHELBY A. OUTLAW
Georgia State Bar No. 555740

/s/ Scott M. Kaye
SCOTT M. KAYE
Georgia State Bar No. 409310

ATTORNEYS FOR PLAINTIFF
THE OUTLAW FIRM
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, Executor — CIVIL ACTION

CASE No. D-97003

Plaintiff

vs

MORETON ROLLESTON, JR.

Defendant

VERDICT

(Filed March 22, 1995)

We the jury find for the plaintiff and award damages as follows:

1.	Actual Damages	$5,100,000
	plus any interest	$ 0
2.	Expense of Litigation including attorneys fees	$ 200,000
	Total	$5,200,000

We find that punitive damages should be awarded ( ) Yes (X) No.

OR

We the jury find for the defendant. ( )

This the 22nd day of March, 1995.

/s/ James A. Robbins Jr.
FOREPERSON

APPENDIX C

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, Executor, Plaintiff, v. MORETON ROLLESTON, JR., individually, MORETON ROLLESTON, JR., LIVING TRUST, and MORETON ROLLESTON, JR. in his capacities as Trustee and/or Beneficiary, Defendants	Civil Action File No: E 37496

INTERLOCUTORY INJUNCTION

(Filed Jul. 7, 1995)

Plaintiff's Motion for Interlocutory Injunction having come on for hearing on July 6, 1995, and after reviewing the pleadings and hearing argument of counsel,

IT IS HEREBY ORDERED AND ADJUDGED that:

Defendant MORETON ROLLESTON, JR. and Defendant MORETON ROLLESTON, JR. LIVING TRUST are enjoined from transferring or conveying any real or personal property without notice to and approval by this Court. This injunction shall remain in full force and effect until further order of this Court.

SO ORDERED THIS 7th DAY OF July, 1995.

/s/ Isaac Jenrette
THE HONORABLE ISAAC JENRETTE
Judge Fulton County Superior Court

Prepared by:
Shelby A. Outlaw
Ga. Bar No. 555740

/s/ Shelby A. Outlaw
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APPENDIX D

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, Executor, Plaintiff, v. MORETON ROLLESTON, JR., individually, MORETON ROLLESTON, JR., LIVING TRUST, and MORETON ROLLESTON, JR. in his capacities as Trustee and/or Beneficiary, Defendants	Civil Action File No: E-37496

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

(Filed July 7, 1998)

The above-referenced action having come before this Court on Plaintiff's Motion for Partial Summary Judgment on the issue of liability pursuant to O.C.G.A. §9-11-56(c) and on Defendants' Third Renewed Motion for Summary Judgment, and the Court, having received

evidence and heard argument of counsel, and upon consideration of the pleadings, answers to interrogatories and admissions on file and depositions, affidavits and evidence in the record, hereby issues its findings of fact and legal conclusions and enters judgment as follows:

FINDINGS

1.

Defendant Moreton Rolleston, Jr. (hereinafter "Defendant Rolleston") was personally served on February 20, 1992, with Plaintiff's Complaint in Civil Action D97003, Superior Court of Fulton County, Georgia.

2.

Plaintiff's Complaint sought actual damages in excess of Five Million ($5,000,000.00) Dollars for Defendant Rolleston's alleged fraud, breach of fiduciary duty, and legal malpractice and for contribution and indemnity arising out of the judgment entered against Plaintiff in Civil Action D81176, Superior Court of Fulton County, Georgia, on March 1, 1991.

3.

Said Civil Action D97003 referenced in Paragraph 1 above was tried to the jury beginning the seventh and ending on the twenty-second day of March and a verdict in the amount of $5,100,000.00 in general damages and $100,000.00 in attorney's fees was rendered on March 22, 1995.

4.

On April 7, 1995, this Court entered Judgment on Jury Verdict against Defendant Rolleston in the total amount of $5,452,493.15 including pre-judgment interest of $252,493.15 and post-judgment interest at the legal rate.

5.

On April 12, 1995, Plaintiff learned that Defendant had filed a Warranty Deed purporting to transfer to the Moreton Rolleston, Jr., Living Trust all of his right, title and interest in and to the property located at Rebel Road Estates as described more particularly in the Deed recorded March 29, 1995 in Deed Book 19415, Pp. 169-171 of the Superior Court of Fulton County, Georgia.

6.

On April 12, 1995, Plaintiff learned that Defendant had filed a Warranty Deed on March 31, 1995 purporting to transfer to the Moreton Rolleston, Jr., Living Trust all of his right, title and interest in the Lots Numbered One Thousand Seventy-two (1072) and One Thousand Seventy-three (1073) of Block Number Seventy-one (71) of Sea Island Subdivision No. 1, Glynn County, Sea Island, Georgia, being recorded in Deed Book 57-K, Folio 155, of the Superior Court of Glynn County, Georgia.

7.

On April 12, 1995, Plaintiff filed this action against Defendants Moreton Rolleston, Jr., individually, Moreton

Rolleston, Jr., Living Trust and Moreton Rolleston, Jr., in his capacities as Trustee and/or Beneficiary of said Trust, pursuant to O.C.G.A. §18-2-22 (acts fraudulent in law against creditors and others) to set aside fraudulent conveyances and for damages, imposition of a constructive trust and injunctive relief. A temporary restraining order issued immediately and Plaintiff filed Notices of Lis Pendens in all counties where Defendant Rolleston owned real property known to Plaintiff.

8.

On July 7, 1995, this Court entered an interlocutory injunction against Defendants which was affirmed on appeal by the Supreme Court.

9.

On December 15, 1997, this Court denied Defendants' Motion for Summary Judgment and denied their request for Certificate of Immediate Review to appeal on interlocutory order.

10.

On December 19, 1997, Plaintiff filed an Amended Complaint setting forth the same causes of action to set aside fraudulent conveyances under O.C.G.A. §18-2-22(1)(2) and (3) and for Permanent Injunction (Count IV), Constructive Trust (Count V), Damages (Count VI) and Attorney's Fees (Count (VII).

11.

On January 7, 1998, Defendants filed a Notice of Appeal of the Court's Order of December 15, 1997 denying Defendants' Motion for Summary Judgment.

12.

On January 27, 1998, at the call of the trial calendar, Defendants moved in open court to dismiss Plaintiff's Amended Complaint on the ground that it dismissed the original Complaint and set forth a new cause of action for fraud which was barred by a two year statute of limitations.

13.

On February 3, 1998, this Court denied Defendants' Motion to Dismiss Plaintiff's Amended Complaint and the same order denied Defendants' Motion to Vacate and Set Aside its Order of December 15, 1997 and Defendants' second (renewed) Motion for Summary Judgment and granted Plaintiff's Motion to Strike Defendants' Notice of Appeal as a nullity.

14.

On February 5, 1998, Defendants filed a notice of appeal of this Court's interlocutory order of February 3, 1998.

15.

On March 6, 1998, Plaintiff filed and served Defendants via hand delivery with its Motion for Partial Summary Judgment on the issue of the Defendants' liability for fraudulent conveyances in avoidance of debt.

16.

Defendants filed no response to Plaintiff's Motion for Partial Summary Judgment within the 30 days allowed by statute and Plaintiff filed its Motion for Grant of Unopposed Motion on April 9, 1998.

17.

On April 10, 1998, Defendants filed their third (renewed) Motion for Summary Judgment (Motion only), relying on and incorporating by reference the Brief, Affidavits, Theories of Recovery and Statement of Material Facts in Dispute originally filed in June, 1996, in support of their first motion for summary judgment on December 15, 1997. Defendants also requested oral argument on both Plaintiff's and Defendants' motions for summary judgment.

18.

This Court heard oral argument on Plaintiff's and Defendants' Motions for Summary Judgment on June 22, 1998, and Defendants renewed their argument that Plaintiff's amended Complaint dismissed the original Complaint filed April 12, 1995 and is barred by a two-year statute of limitations for the tort of fraud.

CONCLUSIONS

Defendants contend that Plaintiff dismissed its original Complaint by the filing of its Amended Complaint on December 19, 1997, which contained the language, "This Amended Complaint replaces and supersedes the original Complaint filed and served on April 12, 1995." It is a matter of statutory law that "whenever the claim or defense asserted in the amended pleadings arises out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." O.C.G.A. §9-11-15(c). Plaintiff's Amended Complaint sets forth the same causes of action to set aside property transfers pursuant to O.C.G.A. §18-2-22(1), (2) and (3) as the original Complaint and they arise out of the same conduct, transaction, or occurrence as described in Plaintiff's original complaint. The court concludes that Plaintiff's Amended Complaint relates back to the original date of filing and Defendants' contention has no merit.

2.

Defendants further contend that Plaintiff's claims for relief set forth in Plaintiff's Amended Complaint are barred by a two-year statute of limitation regarding the tort of fraud. Defendants' contention is without merit in the case at bar because the amended Complaint relates back to April 12, 1995, and it is undisputed that Plaintiff filed suit the same day it discovered the transfers from Defendant Moreton Rolleston, Jr., to the Moreton Rolleston, Jr. Living Trust. Moreover, the period of limitation

applying to an equitable suit to set aside a conveyance of real property is seven years from the date of execution of the deed, unless extended by concealment of the fraud, *Stephens v. Walker,* 193 Ga. 330, 18 S.E.2d 537 (1942), *Jones v. Spindel,* 239 Ga. 68, 235 S.E.2d 486 (1977), *McCravy v. McCravy,* 244 Ga. 336, 260 S.E.2d 52 (1979). The period of limitation for actions for damages from injury to Plaintiff's property rights by virtue of Defendants' fraud is four years. O.C.G.A. §9-3-32, *Frost v. Arnaud,* 144 Ga. 26, 85 SE 1028 (1915), *Blocker v. Boswell,* 109 Ga. 230, 236, 34 SE 289 (1899). The Court concludes that the period of limitations has not expired for either an equitable action to set aside fraudulent transfers of real or personal property or for damages arising from the tort itself and that Plaintiff's Amended Complaint states valid causes of action and claims for relief.

3.

Defendants further contend that the Estate of Rebecca Wight Cherry Sims was not a creditor at the time that Defendant Rolleston created the Moreton Rolleston, Jr., Living Trust and executed the deeds of conveyance on February 27, 1995, because there had not yet been a trial (March 7-22, 1995) or judgment (April 7, 1995) rendered against Defendant Rolleston in the underlying action, so that Plaintiff was therefore not entitled to protection against fraudulent transfers under O.C.G.A. §18-2-22. Defendants' argument is an incorrect statement of the law. It is well-settled in Georgia that an action in equity to set aside a fraudulent conveyance is available under O.C.G.A. §18-2-22 to one who has only an uncertain claim. *Kesler, et. al. v. Veal, et. at.,* 182 Ga. App 444, 449,

356 S.E.2d 254 (1987) citing *Westmoreland v. Powell*, 59 Ga. 256, 258 (1877). This court previously held as a matter of law in its order denying Defendants' Motion for Summary Judgment, entered December 15, 1997, that Defendant Rolleston had knowledge of the Estate's claim at the time of the making of the deeds (February 27, 1995) and the filing of same (March 29, 1995 through April 19, 1995). Since the underlying action was filed approximately three (3) years before the deeds transferring valuable real property were executed or recorded, the Court adheres to its earlier holding that the Estate belonged to the class of "creditors and others" protected against fraudulent conveyances under O.C.G.A. §18-2-22.

4.

Defendants similarly contend that Defendant Rolleston was not insolvent at the time of transfers because his real and personal property was valued at between twelve and fourteen million dollars at the time he made the transfers on February 27, 1995 (Affidavit of Moreton Rolleston, Jr., Exhibit "J", Plaintiff's Compendium of Exhibits). The value of Rolleston's assets *prior* to the transfers is not in dispute. It is also undisputed that Rolleston conveyed *all* of his real and personal property to the Moreton Rolleston, Jr. Living Trust on February 27, 1995 (Moreton Rolleston, Jr. Living Trust, Exhibit "I". Plaintiff's Compendium of Exhibits), except for an investment in German Marks in the approximate amount of $507,000.00 which was deposited to the Wachovia Bank account titled in the name of Moreton Rolleston, Jr., Living Trust on March 10, 1995 (Affidavit of Moreton Rolleston, Jr. Exhibit "J"; Defendants' Undisputed Material

Facts, Exhibit "K"; Defendants' Status Reports, Exhibit "L"; Plaintiff's Compendium of Exhibits). It is well established in Georgia law that the test for insolvency under O.C.G.A. §18-2-22 is whether the property retained *after* the transfers is ample to satisfy the debtor's obligations. *Chambers v. Citizen & Southern National Bank*, 242 Ga. 498, 249 S.E.2d 214 (1978) citing *New England Mutual Life Ins. Co. v. Childs*, 185 Ga. 198, 202, 203, 194 S.E. 561 (1937); *Federal Land Bank v. Bush*, 179 Ga. 627, 628, 176 S.E. 639 (1934); *Drake v. Ward-Truitt Co.*, 149 Ga. 54, 56, 99 S.E. 125 (1919). Defendant Rolleston, according to his sworn affidavit and his admissions in judicio, divested himself of *all* real and personal property immediately prior to the verdict (March 22, 1995) and Judgment (April 7, 1995) by transferring it to the Living Trust and was therefore insolvent at the time of transfers as contemplated by O.C.G.A. §18-2-22(1) and (3) – having retained no property with which to satisfy the known claims of the Estate against him.

5.

Defendant Moreton Rolleston, Jr., is the Grantor, the Trustee and the Beneficiary of the Moreton Rolleston, Jr., Living Trust, which is revocable at the Grantor's will. Defendant Rolleston has admitted that he receives all income paid to the Moreton Rolleston, Jr., Living Trust and has reserved all benefit of trust property to himself during his lifetime. (Deposition excerpts, Exhibits "N" and "O", Plaintiff's Compendium of Exhibits) – thus satisfying Plaintiff's burden of proof under O.C.G.A. §18-2-22(1).

6.

Defendant Rolleston has admitted in judicio that the transfers were voluntary and without consideration (Defendants' Status Report, Exhibit "L" Plaintiff's Compendium of Exhibits) – thus satisfying Plaintiff's burden of proof under O.C.G.A. §18-2-22(3).

7.

When the Plaintiff has proven insolvency and voluntary conveyances for no consideration, the law presumes a fraudulent intent. Defendant Moreton Rolleston, Jr., Living Trust is the alter ego of Defendant Grantor Moreton Rolleston, Jr. and the knowledge of Grantor is imputed to the Trust – thus, satisfying Plaintiff's burden of proof under O.C.G.A. §18-2-22(2).

8.

Plaintiff is not required to prove all three statutory components of O.C.G.A. 18-2-22. It is sufficient to prevail if Plaintiff satisfies its burden of proof according to the terms of either (1), (2), or (3) of O.C.G.A. 18-2-22.

9.

Plaintiff having satisfied its burden of proof with respect to subsections (1), (2) *and* (3) of O.C.G.A. 18-2-22, the Court concludes that there is no genuine issue of material fact remaining for trial and Plaintiff is entitled to summary judgment as a matter of law.

JUDGMENT

Having found that there is no genuine issue of fact remaining for trial on the issue of Defendants' liability to Plaintiff for fraudulent conveyances of real and personal property in avoidance of debt and that Plaintiff is entitled to summary judgment as a matter of law on all of its claims (except for permanent injunction, damages and attorneys fees under Counts IV, VI and VII), and having further found that there is no just reason for delay of entry of judgment in favor of the Estate of Rebecca Wight Cherry Sims, the Court pursuant to O.C.G.A. §9-11-54(b) hereby directs entry of Final Judgment in favor of Plaintiff, The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry Executor, and against Defendants, Moreton Rolleston, Jr., Living Trust, and Moreton Rolleston, Jr., individually, and as Trustee and Beneficiary of said Trust, on all of Plaintiffs claims (except its claims for permanent injunction, damages and attorney's fees under Counts IV, VI and VII) and on Defendants' Counterclaim, as follows:

1.

That all property transfers, known and unknown, to the Moreton Rolleston, Jr., Living Trust are hereby set aside and are null and void and of no effect and that the Moreton Rolleston, Jr., Living Trust holds title to such property (except as set forth in paragraph 2 below) and any proceeds received upon the prior disposition of such property in trust as constructive trustee for the satisfaction of debt to Plaintiff in the principal amount of $5,452,493.15, plus post-judgment interest arising out of Civil Action D97003, Superior Court of Fulton County

and of any and all outstanding claims by Plaintiff against the Defendants.

2.

That the real property deeds conveyed by Moreton Rolleston, Jr. to the Moreton Rolleston, Jr. Living Trust are null and void as to Plaintiff's judgment and other claims and are hereby set aside, as follows:

A) That certain Warranty Deed dated February 27, 1995 (filed and recorded in the clerk's office on March 29, 1995) and recorded in Deed Book 19415, Pages 169-171, of the Superior Court of Fulton County, Georgia, purporting to convey from Defendant Moreton Rolleston, Jr. to Defendant Moreton Rolleston, Jr. Living Trust, the property located as Rebel Road Estates, Fulton County, Georgia, (as described more particularly in the Warranty Deed) is hereby set aside and is null and void and of no effect, and title to said property remains in the name of Defendant Moreton Rolleston, Jr. individually.

B) That certain Warranty Deed dated February 27, 1995 (filed in the clerk's office on March 31, 1995) and recorded in Deed Book 57-K, Folio 155, of the Superior Court of Glynn County, Georgia, purporting to convey from Defendant Moreton Rolleston, Jr. to Defendant Moreton Rolleston, Jr. Living Trust, the property located at Lots Numbered One Thousand Seventy-two (1072) and One Thousand Seventy-three (1073) of Block Number Seventy-one (71) of Sea

Island Subdivision No. 1, Glynn County, Sea Island, Georgia, (as described more particularly in the Warranty Deed) is hereby set aside and is null and void and of no effect, and title to said property remains in the name of Defendant Moreton Rolleston, Jr., individually.

C) That the Warranty Deed dated February 27, 1995 (filed in the clerk's office on April 19, 1995) and recorded in Deed Book V-20, Pages 1139-1140, of the Superior Court of Macon County, North Carolina, purporting to convey from Defendant Moreton Rolleston, Jr. to Defendant Moreton Rolleston, Jr. Living Trust, the property located at Condominium Unit #702, VZ Top Mountain Villas Condominium I, Macon County, North Carolina, (as described more particularly in the Warranty Deed) is hereby set aside and is null and void and of no effect, and title to said property remains in the name of Defendant Moreton Rolleston, Jr., individually.

D) That the Warranty Deed dated February 27, 1995 (filed in the clerk's office on April 19, 1995) and recorded in Deed Book 2319, Pages 222-223, of the Superior Court of Clayton County, Georgia, purporting to convey from Defendant Moreton Rolleston, Jr. to Defendant Moreton Rolleston, Jr. Living Trust, the property located at Land Lot 116 of the 13th District of Clayton County, Georgia, (as described more particularly in the Warranty Deed) is hereby set aside and is null and void and of no effect, and title to said property remains in the name of Defendant Moreton Rolleston, Jr., individually.

3.

That Defendants' Counterclaim seeking damages for the filing of Lis Pendens Notices by Plaintiff and for abusive litigation, having been mooted by the Court's grant of summary judgment in favor of Plaintiff, is hereby DISMISSED with prejudice.

4.

That Defendants' Third Renewed Motion for Summary Judgment is hereby DENIED.

5.

That the Plaintiff's claims for permanent injunction, damages and attorney's fees under Counts IV, VI and VII are hereby reserved for trial.

6.

That the interlocutory entered July 7, 1995 remains in full force and effect until further order of this Court.

SO ORDERED this 6th day of June, 1998.

/s/ Isaac Jenrette
ISAAC JENRETTE, Judge
Superior Court of
Fulton County

Order Presented by:

/s/ Shelby A. Outlaw
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